IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 17.07.2019
DELIVERED ON: 18.09.2019

CORAM

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.Nos.2956 to 2969 of 2017
and
C.M.P.Nos.17387, 17388, 17389, 17390, 17391, 17392, 17393, 17394, 17395, 17396, 17397,17398,17399,17400 of 2017, 3089, 3092, 3094, 3098 & 3101 of 2019

CMA.No. 2956 of 2017

M/s.The New India Assurance Co. Ltd.,
Division Office, 102 Premiere
Complex Azhagapuram,
Salem - 16. ... Appellant in all Appeals
Respondent II in Tribunal below

Vs.

1.Azhagammal ... Respondent I in High Court/
Petitioner in Tribunal below

2.Kaliyamoorthy ... Respondents in High Court/
Respondent I in Tribunal below

CMA.No. 2957 of 207

VELLAIYA GOUNDER (DECEASED)
1 VELLAIYAMMAL
2 MANICKAM
3 ANGAMMAL
4 RAMALINGAM
5 POONGODI
6 VIJAYA
7 KALIYAMOORTHY Respondents in High Court/
PETITIONERS 1 TO 7 AND R1 IN TRIBUNAL BELOW

CMA.No. 2958 of 2017

1 DHANALAKSHMI

2 MADHULAKSHMI

3 RAJA
S/O ARUMUGAM

4 KALIYAMOORTHY RESPONDENTS IN HIGH COURT/ PETITIONER 1 TO 3 AND R1 IN TRIBUNAL BELOW

1.POUNAMMAL RESPONDENT 1 IN CMA.NO.2959/17/CLAIMANT

2.KALIYAMOORTHY RESPONDENT 2 IN CMA.NO.2959/17/RESPONDENT

1.RAJAMANI RESPONDENT I IN CMA.NO.2960/17/CLAIMANT I

2.KALIYAMOORTHY RESPONDENT 2 IN CMA.NO.2960/17/RESPONDENT I

1.VENKATESAN

2.POORANI RESPONDENTS 1&2 IN CMA.NO.2961/17/CLAIMANTS

3.KALIYAMOORTHY RESPONDENT 3 IN CMA.NO. 2961/17 RESPONDENT I

1.M.RAMAKRISHNAN

2.R.SATHYA RESPONDENTS 1&2 IN CMA.NO.2962/17/CLAIMANT 1 & 2

3.KALIYAMOORTHY RESPONDENT 3 IN CMA 2962/17/RESPONDENT I

1.BAKKIYAM RESPONDENTS I IN CMA NO.2963/17 /CLAIMANT I

2.KALIYAMOORTHY RESPONDENT 2 IN CMA NO.2963/17/RESPONDENT I

1.VENKATESAN

2.POORANI RESPONDENTS 1 & 2 IN CMA NO. 2964/17/ CLAIMANTS 1 & 2

3.KALIYAMOORTHY RESPONDENTS 3 IN CMA NO. 2964/17/RESPONDENT I

1.MURUGAN

2.VENKATESAN

3.SARASWATHY RESPONDENTS 1 TO 3 IN CMA NO.2965/17 / CLAIMANTS 1 TO 3

4.KALIYAMOORTHY RESPONDENTS 4 IN CMA NO.2965/17 /RESPONDENT I

1.PERUMAL RESPONDENT I IN CMA NO.2966/17 / CLAIMANT I
2.KALIYAMOORTHY RESPONDENT II IN CMA NO. 2966/17 / RESPONDENT I

1.R.KALIYAMMAL RESPONDENT I IN CMA NO. 2967/17 / CLAIMANTS

2.KALIYAMOORTHY RESPONDENT II IN CMA NO. 2967/17/ RESPONDENT

1.C.AYYANAR RESPONDENT I IN CMA NO. 2968/17 / CLAIMANT I

2.KALIYAMOORTHY RESPONDENT II IN CMA NO.2968/17/ RESPONDENT I

1.RAJATHI RESPONDENT I IN CMA NO.2969/17/ CLAIMANT I

2.KALIYAMOORTHY RESPONDENT II IN CMA NO.2969/17/ RESPONDENT I

Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.Nos.182 of 2010, 1576 of 2008, 180 to 181, 183 to 187 & 2144 of 2010, 683 to 685 & 687 of 2011 dated 12.01.2017, respectively on the file of the Motor Accidents Claims Tribunal, Special District Court, Salem District.

For Appellant in all CMAs : Mr.J.Chandran

In C.M.A.Nos.2956 & 2963 of 2017:
For R1 - Mr.R.Neelakandan

In C.M.A.Nos.2961, 2962 & 2964 of 2017:
For R1 & R2 - Mr.R.Neelakandan

In C.M.A.No.2958 of 2017:
For RR1 to 3 - Mr.R.Neelakandan

In C.M.A.No.2965 of 2017:
For RR1 to 3 - Ms.Ramya V.Rao

C O M M O N J U D G M E N T

These Civil Miscellaneous Appeals have been filed by the appellant/Insurance Company, challenging the judgment and decree in M.C.O.P.Nos.182 of 2010, 1576 of 2008, 180 to 181, 183 to 187 & 2144 of 2010, 683 to 685 & 687 of 2011 dated 12.01.2017, on the file of the Motor Accidents Claims Tribunal, Special District Court, Salem District.

2.All the appeals are arising out of the same accident and same award and hence, they are disposed of by this common judgment.

3.The brief facts is as follows:

On 14.01.2008, a group of persons had travelled in the Minidor bearing Reg.No.TN-30-AB-0308 belonging to the 1st respondent, to go to Pallathathanoor to Belur Santhai (Market). While proceeding near Vasisitanathi bridge the driver of the vehicle driven his vehicle in a rash and negligent manner. The said vehicle was capsized in to the river. Due to the said accident, some of the persons travelling in the said Minidor died and some of them suffered grievous injuries, which led to the filing of the above claim petitions. The claimants sought for compensation on the ground that the driver of the Minidor was negligent.

4.All the claim petitions were resisted by the Insurance Company contending that the Minidor vehicle bearing Reg.No.TN-30-AB-0308 being a goods vehicle did not have permit to carry passengers. All the persons viz., the deceased as well as the injured claimants were unauthorised passenger in the goods vehicle and hence, the Insurance Company cannot be made liable to pay compensation.

5.The appellant herein is the Insurance Company aggrieved against the liability made by the Tribunal. The appellant contended that there are 14 persons travelled in the said vehicle bearing Reg.No.TN-30-AB-0308, among them five persons are died and nine persons got injured in the said accident. It is contended by the appellant that the persons travelled after payment of fare of Rs.2.50/- per person and Rs.2/- each bag. Hence, there is violation of law and condition of policy when the owner of the vehicle by collecting fare from passengers by employees Semmalai and Murugan. Hence for the said violation, the owner alone liable to pay compensation. It is further contended that, since the claimants have stated that they have travelled in the goods vehicle after payment of the fare, as there was no bus plying on the route, they ought to have been considered as unauthorised travellers in the goods carriage vehicle. It is also contended by the appellant that the Tribunal after considering the evidence and documents FIR, RC, MVI Report, Deposition of RW1 Sugumaran, RW2 Muruganandam, RW3 Ashok Kumar, ought to have exonerated the liability against the appellant/Insurance Company, since there is violation of policy condition. Further considering the evidence of RW1 Sugumaran and RW2 Muruganandam from Regional Transport Office stating that no driving license was issued to both Murugan and Semmalai, the Tribunal ought to have exonerated the appellant from liability. The evidence of RW3 Ashok Kumar was not considered by the Tribunal, the said Semmalai had no valid driving license at the time of the accident. The owner of the vehicle Kaliyamoorthy without verification of driving license allowed both Murugan and Semmalai to drive the Tata Ace vehicle. The appellant/Insurance Company is not liable to pay compensation instead of ordering pay and recovery. The other grievance raised by the appellant is that treating the claimants as dependants of the deceased Chinnasamy aged 55 years at the time of accident and the Tribunal has awarded sum of Rs.4,21,000/- against the claim of Rs.7,00,000/-. In the said claim application the claimants claimed themselves as legal heirs of the deceased Chinnasamy. In the claim application the claimants stated that the deceased Chinnasamy was travelled as a load man from Salem to Belur and after unloading the coconut chips, the said vehicle was returning from Salem to Belur.

6.The appellant further contended that the persons travelled in the said vehicle bearing Reg.No.TN-30-AB-0308 is a Tata Ace mini tempo the goods vehicle in which 14 persons were travelling at the time of accident. It is admitted by some of the claimants that they were waiting for the bus to go to Belur market for purchase of articles for Pongal festival and at that time the driver of the said vehicle invited them to travel in the said vehicle by collecting Rs.2.50/- per head. Hence, the persons were travelled in the said vehicle as passengers. On perusal of the records it is observed that the following witness examined before the Tribunal:

In MCOP No.180 of 2010: PW1 one Raja has deposed that his mother deceased Parvathy travelled in the said vehicle with vegetables to be sold in Belur market and from Pallathathanoor she started her journey. In MCOP No.182 of 2010: The injured one Alagammal deposed that she was also travelled in the said vehicle with coconut goods along with her grandson Hariharan and the driver also collected Rs.10/- per bag.

In MCOP No.183 of 2010: One Rajamani examined before the Tribunal who has deposed that the said Rajamani and his mother travelled in the said vehicle by taking vegetables to sell the same in Belur market.

In MCOP No.184 of 2010: The deceased are both Chinnapan and Ramayee whose son PW2 Venkatesh examined before the Tribunal who had deposed that his parents were taking vegetables from the garden and sell the same in the Belur market.

In MCOP No.185 of 2010: One Sathya deposed before the Tribunal that her son and her mother were travelled in the said vehicle by taking vegetables to sell the same in Belur market and met with the accident. The child also died in the said accident.

In MCOP No.186 of 2010: One Sivabakiyam deposed that she travelled in the said vehicle with coconut bags and sell the same in the Belur market. The driver collected Rs.10/- per bag

and because of the negligent driving the said vehicle capsized in the river while it was proceeding near Vasisitanathi bridge.
In MCOP No.2144 of 2010: One Murugan was examined before the Tribunal and deposed that his father A.Chinnasamy travelled in the said vehicle as a load man and after unloading coconut chips at Salem and from Salem he was proceeding to Belur. Hence in the said vehicle he travelled on the date of accident. He also contended that the said Tata Ace was owned by 1st respondent and the accident also occurred due to rash and negligent driving by the driver of the said vehicle. Further, he deposed that at the time of accident he was working as a load man in the said Tata Ace vehicle and he was earning a sum of Rs.150/- per day. The evidence of one Murugan is that he claimed compensation for the death of his father A.Chinnasamy by stating that he was a load man of the said Tata Ace which involved in the said accident. In the cross examination also he contended that the said vehicle was a goods vehicle. So from the above said evidence the legal heirs of the deceased claiming compensation for the death of Parvathy, Ramayee, Minor.Hariharan, Chinappan and Murugan as well as the claimants claiming compensation for the injuries sustained by them.

7.The Tribunal after analysing the evidence and documents placed before the same has observed the fact that the claimants who sustained injuries in the said accident are eyewitness to the said accident. Further, by considering the fact that no documents were filed against the contentions made in the FIR, has concluded that the driver of the vehicle Tata Ace by carrying more number of persons with goods driven the same in a rash and negligent manner and caused the accident. The vehicle got capsized and five persons died in the spot and four persons sustained grievous injuries and another five persons were sustained multiple injuries. The Tribunal by taking in to considering the complaint lodged against the driver of the said vehicle that he collected fares and allowed the passengers to drive in the said vehicle, has awarded compensation to the claimants by analysing the age of the persons who died in the said accident and by analysing the nature of injuries, occupation, income. It is also seen from the award that the 1st respondent was the owner of the vehicle, Murugan and Semmalai was the drivers of the vehicle and they collected Rs.2.50/- per person and Rs.2/- each bag. It is also observed that the said vehicle is a goods vehicle as per Ex.P3 and further the driving license of the said driver were not filed before MVI Report. The Tribunal has also observed the evidence of RW1 and RW2 drivers of Murugan and Semmalai were not issued driving license and further RW3 one Ashok Kumar who was officer of the Insurance Company has deposed that the driver of the said vehicle one Semmalai did not possess valid driving license at the time of accident and therefore the Insurance Company is not liable to pay compensation and Ex.R3 the policy were also filed before the Tribunal. But the Tribunal by considering the fact that the said vehicle was insured with the appellant/Insurance Company at the time of accident, and being the insurer of the said vehicle directed the Insurance Company to pay the compensation to the petitioners and recover the same from the 1st respondent who is the owner of the vehicle.

8.On the side of the Insurance Company it is contended that even though there is clear violation of policy condition that the driver of the said vehicle did not possess valid and effective driving license which is breach of policy, the Tribunal has fixed the liability on the Insurance Company to pay the compensation at the first instance and recoer hre same form the owner of the vehicle. The case relied by the respondent by Hon'ble Madurai Bench of Madras High Court in "CMA.(MD) No.400 of 2016 and CMP.(MD) No.5487 of 2016" in the matter of "The United India Insurance Co. Ltd ., Vs K.Balasubramanian" in the said appeal the Insurance policy has been marked as Ex.R1 which shows that there is a coverage for only one employee. Hence, in the said appeal the appellant/Insurance Company was directed to pay the entire compensation and right to recovery from the owner was given.

9.From the evidence all the injured persons and the claimants, it is observed that all the persons started their journey from Pallathathanoor. As per recitals in the FIR, one Ayyanar and his wife Rajathi and some other persons along with them also got into the same vehicle. At that time of accident already there were number of persons in the said Tata Ace vehicle. Hence, it is very much observed that the said vehicle is meant for carrying goods. As per the evidence, a number of persons allowed to travel in the said vehicle. Though their evidence is that, all were travelled in the same vehicle as owner of goods and they sustained grievous injuries and some of the passengers died because of the negligent driving on the part of the drivers of both Murugan and Semmalai. Some of the claimants have also deposed that due to heavy load, the vehicle got capsized into the river. On the side of the respondent RW1 was examined before the Tribunal and he has also clearly deposed that the said drivers Murugan and Semmalai were not in possession of driving license. RW2 who was examined as owner, has deposed that the said vehicle bearing Reg.No.TN-30-AB-0308 is a goods carrying vehicle and further in the cross examination he has clearly deposed that "அனுமதிக்கப்பட்ட பயணிகள் எண்ணிக்கை மட்டும் தான் பயணம் செய்ய முடியும்". Ex.P4, Ex.R3 & Ex.R5 are the Insurance Policies produced before the Tribunal in which it has been clearly mentioned that two persons are permitted to travel in the said goods vehicle and the said goods vehicle shall carry 1550 kgs weight of goods. The licensed carrying capacity has been mentioned and the number of passengers also mentioned as 2 in all gross vehicle is mentioned as 1550 kgs. The evidence of all the claimants prove the fact that they all travelled in the said vehicle along with their goods by paying variable fares.

10.The appellant relied on the case of this Court CMA.No.1529 to 1533 of 2015 in which number of decisions were discussed by the Hon'ble Supreme Court in the following judgments:

a) "New India Assurance Company Ltd., Vs. Shri Satpal Singh and others" reported in "2000 ACJ 2 (SC)"

b) "New India Assurance Company Ltd., Vs. Asha Rani and others" reported in "2003 ACJ 1 (SC)"

c) "National Insurance Company Ltd., Vs. Baljit Kaur and others" reported in "2004 (2) SCC 1"

In the said judgment, the High Court has discussed the aspect of liability in the case whereas the deceased or the injured were travelled as unauthorised passengers in a goods vehicle, based on the principles and also the decisions arrived in number of cases that though permit was issued under Section 66 only for carrying goods, there is scope/permission/ need to carry passengers also at times, they may be either loadmen or workmen or even the owners of the goods. Therefore, in such circumstances not all persons travelling in a goods vehicle would automatically become unauthorised passengers not entitled for coverage. Whether the insurer is liable to pay the compensation or whether the Court directs the insurer to pay the compensation with liberty to recover it from the insured would depend on the determination of the status of the victim i.e. as to whether they are authorised passengers/gratuitous passengers/unauthorised passengers in a goods vehicle.

11.The contentions raised by the respondents/claimants that the said victims were travelled in the vehicle only as owner of goods and they cannot be considered as gratuitous passengers. To substantiate the same, the respondents/claimants have not produced any clear evidence, because their evidence are very much contradictory to each other. Some of them were proceeding from Belur Santhai for purchasing of goods and some of them were travelled in the vehicle by taking their agricultural products and sell in the Belur Market regarding the charges collected also were not clearly proved either by way of evidence and documents. Hence all the victims travelled in the said vehicle cannot be considered as authorised passengers, as owner of goods and Insurance Company cannot be directed to pay the compensation with liberty and recover the same from the owner.

12.Here the claimants who are injured persons as well as the legal heirs of the deceased in variably contended that they were travelling in the said vehicle, some travelled in the said vehicle as a owner of goods by paying charges and some travelled as a passengers by paying charges. Hence when observing the liability of the Insurance Company regarding the coverage and as per the evidence of one Ayyanar who is the complainant in the FIR contended that he and his wife were already passengers in the said vehicle. Hence it cannot be said that they are all owner of goods and they not suppose to travel in the said goods vehicle as passengers. In the recitals that they were waiting for the bus and at that time the said vehicle came to the bus stop and the driver invited them for taking to Belur on payment of charges.

13.Heard the learned counsel appearing for the appellant/Insurance Company as well as the respondents and perused all the materials available on record.

14.From perusal of the policy and also the provisions under Section 147(1)(b) which requires the policy to unsure the person or classes of persons specified in the policy to the extent specified in sub Section 2 against any liability which may be incurred by him in respect of the death or bodily injury to any person, including owner of the goods or his authorized representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place. Hence, it is clearly observed that the Insurance Policy which is a mandatory statutory requirement is required to cover only certain classes of persons and not every person who chooses to travel in any type of vehicle. Here in this case the persons may travel in the said vehicle are the owner of the goods or agent of the owner. In the case of the death of A.Chinnasamy whether all the passengers who are the owner of the goods or the deceased A.Chinnsamy was engaged as agent of the owner of the goods are not proved. Hence all the persons travelled in the said vehicle who are all injured as well as the deceased persons are not covered under the policy. Therefore in the absence of the said statutory requirement, the Insurance Company cannot be made liable to pay the compensation. Hence observation made by the Tribunal directing the Insurance Company to pay the compensation and recover the same from the 1st respondent does not arise.

15.Hence in the case of hand, directing the Insurance Company to pay the compensation and giving it the liberty to recover the same from the owner does not arise, since both the drivers of the said vehicle at the time of accident also did not possess valid driving license and the vehicle involved is also a goods vehicle. Hence, pay and recovery cannot be ordered. The claimants in the cases in which the deceased travelled as a load man also not proved by the claimants. The witness deposed that his father A.Chinnasamy was not engaged as a load man in the said vehicle and he travelled in the said vehicle after unloading the coconut chips load at Salem.

16.Therefore the Insurance Company is not liable to pay compensation. In the said circumstances, the Insurance Company cannot be directed to pay compensation by giving right to pay and recover from the owner. In view of the above said discussions and observations which were made based on the evidence as well as the documents and also based on the discussions arrived in the case above referred, the award of the Tribunal is modified to the effect, the direction given to the Insurance Company to pay the compensation to the claimants at the first instance is alone set aside. The owner of the vehicle shall pay the compensation to the claimants in all cases. Accordingly, all the appeals are allowed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

mtl

To

1.The Special District Judge,
Motor Accidents Claims Tribunal,
Salem District.

Copy To

The Section Officer,
V.R. Section,
High Court, Madras.

+8cc to Mr.R.Neelakandan, Advocate, S.R.No. 80663 to 80670
+2cc to Mr.A.N.Viswanatha Rao, Advocate, S.R.No. 80991

C.M.A.Nos.2956 to 2969 of 2017

VBA(CO)
GN(24/06/2020)